IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 194 of 1985
with
INCOME TAX REFERENCE Nos 194-A to 194-F of 1985
(now numbered under this judgment)

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

AMBALAL SARABHAI TRUST NO 6,7,8,9,10,11,12.SHAHIBAUG HOUSE

Appearance:
MR BB NAIK with MR MANISH R BHATT for Petitioner
MR RK PATEL with MR BD KARIA for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 18/01/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The first statement of case submitted by the Tribunal indicates that pursuant to filing of R.A. Nos. 544 & 545/Ahd/82 arising out of ITA Nos. 2148 & 2149/Ahd/81 in respect of assessment years 1977-78 and 1978-79 between the Commissioner of Income-tax, Gujarat-II, Ahmedabad vs. Ambalal Sarabhai Trust No. 6, Ahmedabad, the Tribunal has referred three questions of law for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961. The second statement of case submitted by the Tribunal indicates that pursuant to filing of R.A. Nos. 546 & 547/Ahd/82 arising out of ITA Nos. 2151 & 2152/Ahd/81 in respect of assessment years 1977-78 and 1978-79 between the Commissioner of Income-tax, Gujarat-II, Ahmedabad vs. Ambalal Sarabhai Trust No. 7, Ahmedabad, the Tribunal has referred three questions of law for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961. The third statement of case submitted by the Tribunal indicates that pursuant to filing of R.A. Nos. 550 & 551/Ahd/82 arising out of ITA Nos. 2155 & 2156/Ahd/81 in respect of assessment years 1977-78 and 1978-79 between the Commissioner of Income-tax, Gujarat-II, Ahmedabad vs. Ambalal Sarabhai Trust No. 8, Ahmedabad, the Tribunal has referred three questions of law for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961. The fourth statement of case submitted by the Tribunal indicates that pursuant to filing of R.A. Nos. 554 & 555/Ahd/82 arising out of ITA Nos. 2159 & 2160/Ahd/81 in respect of assessment years 1977-78 and 1978-79 between the Commissioner of Income-tax, Gujarat-II, Ahmedabad vs. Ambalal Sarabhai Trust No. 9, Ahmedabad, the Tribunal has referred three questions of law for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961. The fifth statement of case submitted by the Tribunal indicates that pursuant to filing of R.A. Nos. 557 & 558/Ahd/82 arising out of ITA Nos. 2162 & 2163/Ahd/81 in respect of assessment years 1977-78 and 1978-79 between the Commissioner of Income-tax, Gujarat-II, Ahmedabad vs. Ambalal Sarabhai Trust No. 10, Ahmedabad, the Tribunal has referred three questions of law for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961. The sixth statement of case submitted by the Tribunal indicates that pursuant to filing of R.A. Nos. 561 & 562/Ahd/82 arising out of ITA Nos. 2166 & 2167/Ahd/81 in respect of assessment years 1977-78 and 1978-79 between the Commissioner of Income-tax, Gujarat-II, Ahmedabad vs. Ambalal Sarabhai Trust No. 11, Ahmedabad, the Tribunal has referred three questions of law for the opinion of this Court under Section 256(1) of the Income-tax Act,

1961 whereas the seventh statement of case submitted by the Tribunal indicates that pursuant to filing of R.A. Nos. 566 & 567/Ahd/82 arising out of ITA Nos. 2171 & 2172/Ahd/81 in respect of assessment years 1977-78 and 1978-79 between the Commissioner of Income-tax, Gujarat-II, Ahmedabad vs. Ambalal Sarabhai Trust No. 12, Ahmedabad, the Tribunal has referred three questions of law for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961.

2. We may point out that the office has given only one Income-tax Reference number i.e. ITR No. 194 of 1985 to all the above referred to references which is contrary to the settled practice and Rules framed by the High Court relating to references and applications under the Income-Tax Act, 1961. Therefore, so far as Ambalal Sarabhai Trusts Nos. 7, 8, 9, 10, 11 and 12 are concerned, the office is directed to treat them as separate and distinct references and they are numbered as Income Tax Reference Nos. 194-A to 194-F of 1985. As common questions of facts and law arise for our consideration, all the above referred to references are disposed of by this common decision.

3. The assessee-trust is a charitable trust having income from interest on securities, dividends, interest, voluntary contributions etc. From the records available with him, the Income-tax Officer found that the assessee was not entitled for the exemption under section 11 of the Act on the ground that the trust in question had used or applied income directly or indirectly for the benefit of persons referred to in Section 13(3) of the Act. The Income-tax Officer also applied the provisions of Section 13(2)(h) of the Act on account of the fact that the amounts were advanced by the trust to the Shahibag Entrepreneurs Ltd. in which persons referred to under Section 13(3) had substantial interest. Further the Income-tax Officer did not allow deductions on account of donations to the public charitable trusts for the reasons that all the trusts had not spent even a single paise from donation for public charitable object. The ITO, therefore, held it to be non-application of income for the objects of the trust within the meaning of Section 11 of the Income-tax Act, 1961. Feeling aggrieved, the assessee carried the matters before the Appellate Assistant Commissioner and the claims of the assessee were allowed. On appeal by the revenue, the Tribunal has confirmed the order passed by the Appellate Assistant Commissioner and the Tribunal has referred the following questions of law in all the above quoted references for the opinion of this Court :-

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of Section 13(2)(h) of the Income-tax Act, 1961, were not applicable to the assessee ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of Section 13(2)(a) of the Income-tax Act, 1961 were not applicable to the assessee ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to the exemption granted under Sec. 11 of the Income-tax Act, 1961 ?

4. We have heard the learned counsel for the parties. In CIT vs. Sarladevi Sarabhai Trust No. 2, (1988) 172 ITR 698, the Division Bench of this Court had an occasion to consider the questions referred to by the Tribunal in the present references and after considering the scheme of Sections 11, 13(2)(h), 13(3) and the explanation appended thereto, the Division Bench has answered all the questions in favour of the assessee and against the revenue. What is held by the Division Bench is as under :-

"A perusal of section 11(1)(a) of the Income-tax Act, 1961, makes it clear that if the assessee-trust is a trust which holds properties wholly for charitable or religious purposes, income derived from such properties in the hands of the trust would be allowed to be excluded from the total income of the previous year if it is shown that such income is applied by the said trust for charitable or religious purposes in India. The word "applicable" is not defined by the Act. The dictionary meaning of the term "apply" as given in the Chamber's 20th Century Dictionary, amongst others, is "to put to use". When a charitable trust makes a donation, it cannot be gainsaid that it has made use of its income. When a charitable trust donates its income to another charitable trust, the provisions of section 11(1)(a) can be said to

have been met by such donor trust and the donor trust can be said to have applied its income for religious and charitable purposes, notwithstanding the fact that the donation is subject to any conditions that the donee will treat the donation as its corpus. The question whether in the given year, the donee trust has spent the donation or not, would be a totally irrelevant consideration. What the donor trust does is the only relevant matter. Utilisation by the donee trust in any year will not be relevant for the purpose of deciding whether the donor trust gets exemption under section 11 of the Act. Even in the hands of the donor trust, 100% of the income could have been accumulated for a maximum period of 10 years subject to the trust following the procedure laid down by the Act. If that is so, merely because the donor trust gifted the concerned income to the donee trust which also was a religious and charitable trust, it cannot be said that the donor trust had acted contrary to the provisions of section 11(1)(a). Since the donee trust could also accumulate 100% of its income for a number of years subject to the procedure permitted by the Act, if the donee trust is asked to accumulate or to keep intact the donated amount but to utilise the income arising from the said corpus for its religious and charitable purposes, it cannot be said that the donor trust has not applied its income which is the subject-matter of the donation for religious or charitable purposes. It cannot be disputed that the donated corpus is available to the religious and charitable trust for its own purposes and these purposes are also religious and charitable purposes. The donee trust cannot utilise the corpus for any other purposes nor can it utilize the income arising from such corpus for any extraneous purposes. It is also easy to visualise that keeping the corpus intact and utilising the income accruing from the corpus for religious and charitable purposes would itself amount to application of the income arising from the corpus for religious and charitable purposes. Moreover, Instruction No. 1132 dated January 5, 1978, shows that the Central Board of Direct Taxes itself has issued a clear-cut guideline to all the Commissioners of Income-tax that a charitable trust will not lose exemption under section 11 of the Act if it passes a sum of money to another charitable trust for utilisation by

> the donee trust towards its charitable purposes and that it shall be proper utilisation of money by the donor trust for charitable purposes. The instructions of the Central Board of Direct Taxes are binding on all officers under the Income-tax Act. Hence, an Income-tax Officer would be justified in granting exemption to a charitable trust which has made a donation of its income to another charitable trust. Even where the donee trust has been established by the same group of persons, the provisions of section 13(2)(h) would not apply. The Central Board of Direct Taxes Circular No. 45 dated September 2, 1970, clearly indicates that section 13(2)(h) will cover only those cases in which investments are made by the assessee-trust in the capital of the concerns to which section 13(2) applies. The circular further indicates that in case of lendings by the trust, the provisions of clause (a) of sub-section (2) of section 13 will apply and not section 13(2)(h) and any contrary interpretation would not be a harmonious interpretation of clauses (a) and (h) of sub-section (2) of section 13. It is, therefore, obvious that if at all, clause (a) of sub-section (2) of section 13 will apply and not clause (h) thereof, if it is shown that lending was without adequate security or adequate interest or both. Under these circumstances, if deposits are made by a trust in such concerns, such deposits will not be covered by section 13(2)(h) and if at all, it is only section 13(2)(a) which would apply to such deposits."

5. In view of the principles laid down by the Division Bench in the above referred to decision, we are of the opinion that the Tribunal was right in law in coming to the conclusion that provisions of Section 13(2)(h) of the Income-tax Act, 1961 were not applicable to the assessee and that the assessee was entitled to the exemption under Section 11 of the Income-tax Act. Question Nos. 1 and 3 are, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

6. As far as question No. 2 is concerned, the learned counsel for the parties state at the Bar that the same is concluded by the decision of the Division Bench of this Court in CIT vs. Nirmala Bakubhai Foundation, (1997) 226 ITR 394 wherein the Division Bench has held that Section 13(2)(h) will cover only those cases in

which investments are made by the assessee-trust in the capital of the concerns to which Section 13(3) applies and in case of lendings by the trust, the provisions of clause (a) of sub-section (2) of Section 13 will apply and not Section 13(2)(h), if it is shown that the lending was without adequate security or adequate interest or both.

7. Applying the principles laid by the Division Bench in the above referred to decision to the facts of the present case, we find that the Tribunal which is a final fact finding authority has held that the lending was not without adequate security or adequate interest or both. Therefore, in our view, the provisions of section 13(2)(a) will not be applicable to the assessee. The Tribunal was thus right in law in coming to the conclusion that the provisions of Section 13(2)(a) of the Income-tax Act, 1961 were not applicable to the assessee. Question No. 2 is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

The references accordingly stand disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

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